

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
Charleston Division**

Nelson L. Bruce,)	
)	
	Plaintiff,)
)	Civil Act. No. 2:19-cv-03456-BHH-KDW
v.)	
)	
Bank of America, N.A.,)	
)	
	Defendant.)
)	

**DEFENDANT BANK OF AMERICA’S MOTION
TO STRIKE PLAINTIFF’S SUR REPLY**

NOW COMES Defendant Bank of America, N.A. (“BANA”), by and through undersigned counsel, and moves this Court to strike Plaintiff Nelson Bruce’s (“Plaintiff”) Sur Reply to Reply to Response to Motion For Summary Judgment (the “Sur Reply”) (Doc. No. 97) and states as follows:

1. BANA filed its Motion for Summary Judgment on April 30, 2021. (Doc. No. 83).
2. Plaintiff filed his Response to BANA’s Motion for Summary Judgment on June 4, 2021. (Doc. No. 87).
3. BANA filed a Reply to Plaintiff’s Response on June 8, 2021. (Doc. No. 88).
4. In response to BANA’s reply, Plaintiff filed a document entitled “Sur Reply to Reply to Motion for Summary Judgment” on June 23, 2021 (Doc. No. 97), fifteen (15) days after BANA filed its Reply.
5. Neither the Federal Rules, nor the Local Rules, permit a Sur Reply without leave of Court. Even if Plaintiff’s Sur Reply were considered a “Reply” under Local Rule 7.07, it was not timely filed. Local Rule 7.07 provides that replies must be filed within seven (7) days of the service of a response.

6. Because it is both not allowed, and untimely, Plaintiff's Sur Reply must be stricken. *See Parker v. Innertech-Spartanburg*, No. 6:09-CV-00773-JMC, 2011 WL 13455, at *2 (D.S.C. Jan. 4, 2011) (adopting Report and Recommendation that Sur Reply be stricken as untimely); *Cooper v. Flying J Travel Plaza, Inc.*, No. 3:06-1270-CMC-JRM, 2007 WL 4211027, *11 (D.S.C. Nov. 27, 2007) (adopting Report and Recommendation that the Sur Reply should be stricken as untimely); *Silvious v. Midland Credit Management, Inc.*, No. 5:07cv145, 2009 WL 2392107, *5 (N.D. W. Va. Aug. 3, 2009) (adopting Report and Recommendation that Sur Reply be stricken).

WHEREFORE, BANA respectfully requests that the Court grant its Motion to Strike Plaintiff's Sur Reply and award BANA its costs and fees in preparing this Motion, and such other and further relief as the Court deems just and equitable.¹

This is the 30th day of June, 2021.

/s/ T. Richmond McPherson III
 Robert A. Muckenfuss (SC Federal Bar #7333)
 T. Richmond McPherson III (SC Federal Bar #11214)
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¹ In the event that the Court denies BANA's Motion to Strike Plaintiff's Sur Reply, BANA requests that it be given seven (7) days from the date of the Court's Order to file a responsive memorandum to the Sur Reply.

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2021, the foregoing *Motion to Strike Plaintiff's Sur Reply* was filed via the court's CM/ECF system and served by First Class U.S. Mail with postage prepaid upon the following:

Nelson L. Bruce
144 Pavilion Street
Summerville, SC 29483

Pro Se Plaintiff

s/ T. Richmond McPherson III

T. Richmond McPherson III